'Topfree 7' disappointed

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Though cleared, some not happy with ruling

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Times-Union

Some of the "Topfree Seven" women expressed disappointment today in a judge's decision to uphold a law that prohibits women from going topless in public under most circumstances.

In front of the Susan B. Anthony statue at the Hall of Justice, Mary Lou Schloss and four of her co-defendants today held a press conference just after City Court Judge Herman J. Walz officially dismissed misdemeanor charges of indecent exposure against the women.

The women, arrested at Cobbs Hill Park last summer, had wanted Walz to rule that the law was unconstitutional because it prohibits women, but not men, from appearing nude from the waist up in public.

Instead, Walz ruled more narrowly, saying the law shouldn't have been applied to the protesters who bared their breasts, because they were exercising their rights to freedom of speech.

"I'm glad they dropped the charges, but I'm very upset that we didn't win on equal protection," Schloss said.

The other four who appeared outside court today at a press conference were: Kathleen F. Reilly; Elise Jo Tooley; Lynn Zicari, all of Rochester; and Nikki G. Craft of Oskosh, Wis.

The other co-defendants were Ramona Santorelli of Rochester and Debora A. Seymour of Astoria, Ore.

Craft, a national women's rights activist, who with 12 other women filed a class action suit on the topfree issue against the National Park in Boston, said she was displeased that Walz would not take "a personal risk" and strike down the law as unconstitutional.

"I will be traveling throughout the country urging women to break laws," Craft said. "I am disappointed in Judge Walz for copping out on this plea. . . . In a society where women are not protected by the law, women should not uphold the law."

Assistant District Attorney Thomas J. Brilbeck said today he will be appealing Walz's decision because he does not believe the charges should have been dismissed.

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'Topfree 7' members are disappointed

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The women, who coined the phrase "Topfree 7," were arrested June 21 in a protest.

Brilbeck had maintained that the case simply involved a group of women who violated the law. But the women had asked Walz to consider more complicated constitutional and cultural questions.

Brilbeck's primary argument was that "it's the public's right not to be exposed to these acts," he said in an interview.

In an 18-page written decision released yesterday, the judge agreed with the prosecution that the law was enacted to protect the public.

But he also wrote that "as applied to defendants' conduct . . . the statute violates their rights to free expression as guaranteed by the federal and state constitutions."

Brilbeck said that since the charges against the women were dismissed, the womencould not appeal Walz's decision.

"I don't think its changes are that far-reaching," Brilbeck said of the decision. "It will not discourage the police from doing their job of enforcing the statute. The decision has no adverse affects on either the defendants or the People (prosecution)."

Schloss' husband, Morley Schloss, coordinator of Naturist Rochester, a nudist group, predicted that Walz's decision would prompt more topfree protests, complete with chants and signs, at state beaches and parks next summer.

"Times are changing," Morley Schloss said.

Walz's decision is not binding on Rochester's other City Court judges, or in other local courts.

Since the law directly prohibits women from going topfree in public, the women claim it violated their constitutional right to be treated equally and that the statute promotes "an unhealthy obsession with breasts as sexual objects."

But in his decision, Walz disagreed and ruled that the gender distinction does not "render the statute unconstitutional."

Walz said that the law originally was aimed at "curbing the phenomenon of topless waitresses."

Prior to 1983, the law had allowed men and women to appear on a beach without bathing suit bottoms, but directed women to leave their tops on. In 1983, in an attempt to abolish nude beaches, the law was amended to forbid exposure in public places. The law, however, does contain provisions to allow breastfeeding in public and for breasts to be exposed for entertainment such as topless dancing.

The judge agreed with the prosecution's contention that the primary purpose of the statute was to regulate use of public areas.

"Today community standards, as perceived by the Legislature, regard the female breast as an intimate part of the body. Therefore, the state may legitimately enforce this standard by requiring that the female breast not be exposed in public places."

At their trial in September, the women presented several issues. They argued that this law, and others, continue to foster the public's unhealthy obsession with breasts.

District Attorney Howard R. Relin had asserted in the press that the statute protects women by preventing rape and sexual harassment.

In his decision, Walz discounted Relin's assertion. The judge said: "This argument can be dismissed out of hand. The state has no authority to limit a person's freedom merely because it may induce others to violate the law. This argument is another example of men attempting to protect women by denying women their freedom."

Relin could not be reached for comment.

The women also argued that the law violates their rights "to determine their own physical appearance."

Walz ruled that even if that right did exist, it was subject to "reasonable regulation."

Citing several other cases that challenged the state law, Walz noted that the Topfree 7 case was the first to seriously challenge it on sex discrimination grounds.

Walz also addressed the recent Court of Appeals decision of The People vs. Robert Hollman. In that case, the state's highest court ruled that Hollman's constutuional right to free expression was not violated when he was arrested after sunbathing nude at Riis Park in Queens.

In contrast to the Hollman case, Walz wrote that the Topfree Seven had conveyed clearly their intent to protest the sexism of the statute.